

CUMULATIVE DIGEST

CH. 12

CONTEMPT OF COURT

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§12-1

General Rules

People v. Geiger, 2012 IL 113181 (No. 113181, 10/18/12)

Contempt has no sentencing classification or sentencing range set by the legislature. Because there are no sentencing guidelines, Appellate Courts have a special responsibility to determine that the contempt power is not abused. A contempt sentence is reviewed for an abuse of discretion.

Factors that a trial court may consider when fashioning an appropriate sentence for contempt are: (1) the extent of the willful and deliberate defiance of the court's order, (2) the seriousness of the consequences of the contumacious behavior, (3) the necessity of effectively terminating the defendant's defiance as required by the public interest, and (4) the importance of deterring such acts in the future. Punishment of criminal contempt should reflect the least possible power adequate to achieve the end proposed.

Defendant was sentenced to 20 years' imprisonment for criminal contempt after refusing to testify at a retrial as a witness for the prosecution, even though the prosecutor offered him use immunity for his testimony and the court informed defendant that he had no Fifth Amendment privilege. Defendant had not been called as a witness at the original trial, but when he was 15 years old had testified at a co-defendant's trial.

The Supreme Court concluded that the 20-year sentence was an abuse of discretion and manifestly disproportionate to the nature of the offense. Defendant willfully and deliberately refused to testify, but based on his mistaken belief that he had a right to do so. His belief was not unreasonable given that his own attorney maintained that defendant could assert the privilege. His refusal may also have been driven by the fact that as a gang member, he feared retaliation. Defendant's testimony was cumulative of other evidence, and his refusal to testify did not hamper the State's ability to prosecute, as it obtained a conviction without defendant's testimony. Defendant's conduct was nonviolent and he was not flagrantly disrespectful to the trial judge.

The court remanded to afford the circuit court the opportunity to enter a more reasonable sentence.

(Defendant was represented by Assistant Defender Fletcher Hamill, Elgin.)

People ex rel. City of Chicago v. Le Mirage, 2013 IL App (1st) 093547 (Nos. 1-09-3547 & 1-09-3549 cons., 11/14/13)

Criminal contempt is punishable by fine or imprisonment. The power to punish for contempt is inherent and can be neither created nor limited by statute. Because it is not subject to legislation, contempt has no sentencing classification or range. Because criminal contempt is not bound by sentencing ranges, courts have a special responsibility for determining that the contempt power is not abused. Punishment of criminal contempt should reflect the least possible power adequate to the end proposed.

In sentencing a criminal contemnor, a trial court may consider: (1) the extent of the willful and deliberate defiance of the court's order; (2) the seriousness of the consequences of the contumacious behavior; (3) the public interest in terminating the defendant's defiance; and (4) the importance of deterring future acts. Sentences imposed for criminal contempt are reviewed for an abuse of discretion.

Defendants were convicted of indirect criminal contempt for violating a court order that

they vacate the second floor of a building due to building code violations that made occupancy of that floor unsafe. Deaths and injuries occurred when they violated that order by allowing the second floor to be occupied. Those deaths and injuries did not result from the structural defects that made occupancy of the second floor unsafe, but occurred when 21 people were crushed to death in a panic after security guards released pepper spray in an attempt to subdue a fight. The deaths and injuries were not properly considered by the court in aggravation where there was no reliable evidence that defendants' contumacious conduct was the proximate cause of those deaths and injuries.

People v. Covington, 395 Ill.App.3d 996, 917 N.E.2d 618 (4th Dist. 2009)

1. Civil contempt occurs where the purpose of the penalty is to coerce the contemnor to comply with a court order. Under civil contempt, sanctions cease when the contemnor complies with the court order. Thus, a civil contemnor is said to "hold the keys to the jailhouse door."

Criminal contempt, on the other hand, punishes one for committing prohibited conduct or for failing to take action that was required. Where the purpose of the trial court's sanctions was not to compel future action, but to punish defendant for failing to obey the trial court's order to obtain employment, the contempt was clearly criminal rather than civil.

2. A defendant may be sanctioned for indirect criminal contempt only if he is afforded the same constitutional protections afforded to any other criminal defendant. An alleged criminal contemnor is entitled to know the nature of the charge and to have the charge definitely and specifically set forth. In addition, the defendant must have an opportunity to respond. Finally, an alleged contemnor enjoys the privilege against self-incrimination, the presumption of innocence, and the right to be proved guilty beyond a reasonable doubt.

3. Defendant was not afforded sufficient due process to permit an adjudication of indirect criminal contempt. To provide notice of the alleged contempt, the contemnor must receive written notice of the conduct which allegedly constituted contempt. Because the State did not file a petition for adjudication of criminal contempt, but merely filed a petition for rule to show cause, the procedure was insufficient to provide proper notice of a potential criminal sanction for contempt.

In addition, the State has the burden to prove the charges in a criminal contempt petition beyond a reasonable doubt, and cannot shift that burden to the defendant compelling him to "show cause" why he should not be held in contempt. Neither the State nor the defendant presented any evidence concerning the alleged contempt. However, the court took judicial notice of a previous proceeding at which it *sua sponte* asked the defendant to explain why he did not have a job and why he should not be held in contempt. The trial judge also asked defendant whether he had any witnesses or evidence to present in opposition to the contempt petition, and on several occasions ordered defendant to show what he had done to seek employment. The court concluded that such a procedure impermissibly shifted the State's burden of proof to the defendant.

Finally, a person charged with indirect criminal contempt is entitled to, and must be admonished of, the right to counsel. Here, the trial court did not at any point inform defendant of his right to counsel.

The indirect criminal contempt order was vacated, and the cause was remanded for further proceedings.

(Defendant was represented by Assistant Defender Stuart Shiffman, Springfield.)

People v. Duff, 2012 IL App (5th) 100479 (No. 5-10-0479, 6/18/12)

Criminal contempt of court is conduct by an individual that is calculated to embarrass, hinder, or obstruct the court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute. The actions must be willful, as criminal contempt requires intent.

In a direct form of criminal contempt committed in the presence of the court, the intent can be inferred from the nature of the contemptuous conduct. Because the contemptuous behavior occurs in the presence of the court, the court may proceed on this personal knowledge and summarily punish the contemnor without conducting a hearing or allowing a defense to the charge.

A contemnor's health condition could bar criminal responsibility. If there is a substantial issue of the defendant's mental capacity to commit contempt, that matter is beyond the personal knowledge of the trial judge, and requires that a hearing on the contemnor's mental capacity be conducted.

There was a substantial issue raised regarding defendant's mental capacity that could have impacted his ability to form the intent to commit direct criminal contempt. Among other things, defendant claimed that President Bush and a state senator had confirmed that a federal investigation should be conducted into his allegations that judges had ruined his marriage and endangered his children by allowing his former in-laws to sexually molest his children. The petition before the court in the underlying proceeding alleged that defendant was mentally ill. The trial judge also commented that defendant appeared to have two separate personalities, that his behavior was not reasonable and rational, and that he believed defendant suffered from a personality or behavior disorder or mental illness.

The Appellate Court reversed defendant's convictions and remanded for a hearing to determine if defendant had a mental illness that could have a bearing on his ability to form the requisite intent to commit direct criminal contempt.

(Defendant was represented by Assistant Defender John Gleason, Mt. Vernon.)

People v. Hixson, 2012 IL App (4th) 100777 (No. 4-10-0777, 1/23/12)

1. Criminal contempt may be direct or indirect. Direct criminal contempt of court can occur in two ways - the contemptuous act may be personally observed by the judge, or the act may be committed outside the immediate physical presence of the judge but within an integral part of the court such as the circuit clerk's office. Under appropriate circumstances, filing a document with the clerk of the court may be the basis for a direct criminal contempt conviction.

The alleged condemner in an indirect contempt case is entitled to due process safeguards, including notice, an opportunity to answer, and a hearing. Such safeguards are not required for direct contempt, which may be punished summarily because all of the elements of the offense are within the direct knowledge of the court. However, where direct criminal contempt occurs in the constructive presence of the court, as where the contempt is based on the filing of a document in the clerk's office, the procedural requirements of indirect criminal contempt proceedings must be followed.

One element of contempt is that the conduct in question must have been wilfully committed. Intent may be inferred from the circumstances accompanying the conduct and need not be proven directly.

2. The evidence was insufficient to show that defendant acted wilfully when he committed the conduct in question. Defendant filed a *pro se* "petition for injunctive relief" which argued that he was statutorily entitled to receive day-for-day good conduct credit

against his sentence. He also sent a proposed order which he asked the court to enter and which had the judge's name typed on (rather than below) the signature line. The trial court found that the order might be interpreted as a copy of an order that had been entered by the court rather than a proposed order, and could hinder the administration of justice and "put the Court in disrepute."

The Appellate Court concluded that there was insufficient evidence to show that defendant intended to embarrass, hinder, or obstruct the trial court. "At most, the facts and circumstances indicate defendant submitted 'a faulty proposed order.'" Because there was insufficient evidence to support a finding of direct criminal contempt, the trial court's order was reversed.

3. Furthermore, because this was a constructive direct criminal contempt proceeding which occurred outside the presence of the trial judge, defendant was entitled to procedural protections including notice, an opportunity to answer, a hearing, and several provisions applicable to criminal cases including the privilege against self-incrimination, the presumption of innocence, the reasonable doubt standard, the right to counsel, the right to confront or cross-examine witnesses, the right to be personally present at trial, the right to testify or remain silent, the right to compulsory process, and the right to present testimony favorable to his defense.

(Defendant was represented by Assistant Defender John Gleason, Mt. Vernon.)

People v. Perez, 2014 IL App (3d) 120978 (No. 3-12-0978, 10/1/14)

1. Criminal contempt arises from conduct calculated to: (1) impede, embarrass, or obstruct the court in its administration of justice; (2) derogate from the court's authority or dignity; or (3) bring the administration of law into disrepute. Direct criminal contempt involves a defiant or disrespectful act occurring in the courtroom and witnessed by the judge. Neither a formal charge nor an evidentiary hearing is necessary in direct criminal contempt. The misconduct is observed by the judge and the relevant facts lie within his or her personal knowledge.

Indirect criminal contempt, by contrast, involves conduct the judge has not personally witnessed. Accordingly, indirect criminal proceedings must be initiated by a petitioner's written request for adjudication and give rise to similar procedural safeguards as those required in criminal proceedings, including the right to be advised of the nature of charge, to be presumed innocent, and proof beyond a reasonable doubt.

Typically, indirect criminal contempt involves a situation where the accused willfully ignores a valid court order. In some unusual situations, indirect criminal contempt involves disrespectful acts to the court's authority, even though such acts were not witnessed by the judge.

2. Defendant was in traffic court waiting to appear on a speeding ticket. When the judge took a recess, defendant left the courtroom and in the hallway a bailiff overheard her say, "I waited all fucking morning and now she takes a break." Defendant walked "all the way down the hall" continuing to swear. The bailiff told her she could not use such language and defendant calmed down.

After the bailiff told the judge about defendant's comments, the judge instructed the State to prepare and file a petition for contempt. The State drafted a document entitled "Court Order," which ordered defendant to "show good cause as to why she should not be held in indirect criminal contempt of court." The judge denied defense counsel's request for a short continuance to prepare for trial, stating that the case was not criminal, but basically civil in nature, and proceeded to trial immediately.

The bailiff testified about what she observed and after arguments by counsel, the judge found defendant guilty of criminal contempt and sentenced her to eight days in jail. In making her findings, the judge again stated that the case was civil in nature and the standard was preponderance of the evidence. The judge found that defendant did not “do something that she was told to do,” and engaged in an outburst that was “disruptive to my court and the administration of justice.” The judge also found that the words were very disrespectful.

At the end of her findings, the judge stated that it was criminal contempt, and “If you want to say beyond a reasonable doubt...if that’s the standard, we will find that beyond a reasonable doubt.”

3. The Appellate Court reversed defendant’s conviction outright since the evidence did not prove that she engaged in criminal contempt. The court disagreed with the trial judge’s finding that defendant’s words were disrespectful or that they were intended to embarrass the judge and bring her administration of the law into disrepute. Defendant never communicated her statements directly to the judge and did not identify the judge by name. And her curse word was not linked to the judge herself, but rather was linked to the length of time defendant had been waiting, “all f**king morning.” The court noted that defendant’s comments about additional delay resulting from a recess may constitute protected speech under the first amendment.

The court also disagreed with the trial judge’s finding that defendant did not “do something that she was told to do.” There was no evidence that defendant disobeyed a court order requiring her to behave in a certain way in the hallway. Additionally, once the bailiff told defendant not to use profanity, defendant “simmered” down, further showing that defendant did not disobey any directive of the court or an officer of the court.

4. Although unnecessary to the disposition of this case, and conceded by the State on appeal, the Appellate Court noted several ways in which the trial judge’s actions violated defendant’s right to due process. First, the charging instrument should not have been framed as a petition to show cause since this language applies only in civil contempt proceedings and impermissibly shifted the burden of proof to defendant.

Second, the judge’s denial of defense counsel’s request for a continuance to prepare for trial deprived defendant of her due process right to have notice within a reasonable time in advance of the hearing. And third, the judge should have voluntarily recused herself since she spoke directly to the State’s only witness, the bailiff. Due process requires another judge to hear the case if the judicial target of verbal commentary becomes personally embroiled in the conflict.

Defendant’s conviction was reversed.

Because the case was reversed on reasonable doubt grounds, the concurring justice would not have reached the procedural due process issues.

(Defendant was represented by Assistant Defender Mario Kladis, Ottawa.)

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§12-2

Direct Contempt and Indirect Contempt

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There was a substantial issue raised regarding defendant's mental capacity that could have impacted his ability to form the intent to commit direct criminal contempt. Among other things, defendant claimed that President Bush and a state senator had confirmed that a federal investigation should be conducted into his allegations that judges had ruined his marriage and endangered his children by allowing his former in-laws to sexually molest his children. The petition before the court in the underlying proceeding alleged that defendant was mentally ill. The trial judge also commented that defendant appeared to have two separate personalities, that his behavior was not reasonable and rational, and that he believed defendant suffered from a personality or behavior disorder or mental illness.

The Appellate Court reversed defendant's convictions and remanded for a hearing to determine if defendant had a mental illness that could have a bearing on his ability to form the requisite intent to commit direct criminal contempt.

(Defendant was represented by Assistant Defender John Gleason, Mt. Vernon.)

People v. Hixson, 2012 IL App (4th) 100777 (No. 4-10-0777, 1/23/12)

1. Criminal contempt may be direct or indirect. Direct criminal contempt of court can occur in two ways - the contemptuous act may be personally observed by the judge, or the act may be committed outside the immediate physical presence of the judge but within an integral part of the court such as the circuit clerk's office. Under appropriate circumstances, filing a document with the clerk of the court may be the basis for a direct criminal contempt conviction.

The alleged condemner in an indirect contempt case is entitled to due process safeguards, including notice, an opportunity to answer, and a hearing. Such safeguards are not required for direct contempt, which may be punished summarily because all of the elements of the offense are within the direct knowledge of the court. However, where direct criminal contempt occurs in the constructive presence of the court, as where the contempt is based on the filing of a document in the clerk's office, the procedural requirements of indirect criminal contempt proceedings must be followed.

One element of contempt is that the conduct in question must have been wilfully committed. Intent may be inferred from the circumstances accompanying the conduct and need not be proven directly.

2. The evidence was insufficient to show that defendant acted wilfully when he committed the conduct in question. Defendant filed a *pro se* "petition for injunctive relief" which argued that he was statutorily entitled to receive day-for-day good conduct credit against his sentence. He also sent a proposed order which he asked the court to enter and which had the judge's name typed on (rather than below) the signature line. The trial court found that the order might be interpreted as a copy of an order that had been entered by the court rather than a proposed order, and could hinder the administration of justice and "put

the Court in disrepute.”

The Appellate Court concluded that there was insufficient evidence to show that defendant intended to embarrass, hinder, or obstruct the trial court. “At most, the facts and circumstances indicate defendant submitted ‘a faulty proposed order.’” Because there was insufficient evidence to support a finding of direct criminal contempt, the trial court’s order was reversed.

3. Furthermore, because this was a constructive direct criminal contempt proceeding which occurred outside the presence of the trial judge, defendant was entitled to procedural protections including notice, an opportunity to answer, a hearing, and several provisions applicable to criminal cases including the privilege against self-incrimination, the presumption of innocence, the reasonable doubt standard, the right to counsel, the right to confront or cross-examine witnesses, the right to be personally present at trial, the right to testify or remain silent, the right to compulsory process, and the right to present testimony favorable to his defense.

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Indirect criminal contempt, by contrast, involves conduct the judge has not personally witnessed. Accordingly, indirect criminal proceedings must be initiated by a petitioner’s written request for adjudication and give rise to similar procedural safeguards as those required in criminal proceedings, including the right to be advised of the nature of charge, to be presumed innocent, and proof beyond a reasonable doubt.

Typically, indirect criminal contempt involves a situation where the accused willfully ignores a valid court order. In some unusual situations, indirect criminal contempt involves disrespectful acts to the court’s authority, even though such acts were not witnessed by the judge.

2. Defendant was in traffic court waiting to appear on a speeding ticket. When the judge took a recess, defendant left the courtroom and in the hallway a bailiff overheard her say, “I waited all fucking morning and now she takes a break.” Defendant walked “all the way down the hall” continuing to swear. The bailiff told her she could not use such language and defendant calmed down.

After the bailiff told the judge about defendant’s comments, the judge instructed the State to prepare and file a petition for contempt. The State drafted a document entitled “Court Order,” which ordered defendant to “show good cause as to why she should not be held in indirect criminal contempt of court.” The judge denied defense counsel’s request for a short continuance to prepare for trial, stating that the case was not criminal, but basically civil in nature, and proceeded to trial immediately.

The bailiff testified about what she observed and after arguments by counsel, the judge found defendant guilty of criminal contempt and sentenced her to eight days in jail. In making her findings, the judge again stated that the case was civil in nature and the standard was preponderance of the evidence. The judge found that defendant did not “do something that she

was told to do,” and engaged in an outburst that was “disruptive to my court and the administration of justice.” The judge also found that the words were very disrespectful.

At the end of her findings, the judge stated that it was criminal contempt, and “If you want to say beyond a reasonable doubt...if that’s the standard, we will find that beyond a reasonable doubt.”

3. The Appellate Court reversed defendant’s conviction outright since the evidence did not prove that she engaged in criminal contempt. The court disagreed with the trial judge’s finding that defendant’s words were disrespectful or that they were intended to embarrass the judge and bring her administration of the law into disrepute. Defendant never communicated her statements directly to the judge and did not identify the judge by name. And her curse word was not linked to the judge herself, but rather was linked to the length of time defendant had been waiting, “all f**king morning.” The court noted that defendant’s comments about additional delay resulting from a recess may constitute protected speech under the first amendment.

The court also disagreed with the trial judge’s finding that defendant did not “do something that she was told to do.” There was no evidence that defendant disobeyed a court order requiring her to behave in a certain way in the hallway. Additionally, once the bailiff told defendant not to use profanity, defendant “simmered” down, further showing that defendant did not disobey any directive of the court or an officer of the court.

4. Although unnecessary to the disposition of this case, and conceded by the State on appeal, the Appellate Court noted several ways in which the trial judge’s actions violated defendant’s right to due process. First, the charging instrument should not have been framed as a petition to show cause since this language applies only in civil contempt proceedings and impermissibly shifted the burden of proof to defendant.

Second, the judge’s denial of defense counsel’s request for a continuance to prepare for trial deprived defendant of her due process right to have notice within a reasonable time in advance of the hearing. And third, the judge should have voluntarily recused herself since she spoke directly to the State’s only witness, the bailiff. Due process requires another judge to hear the case if the judicial target of verbal commentary becomes personally embroiled in the conflict.

Defendant’s conviction was reversed.

Because the case was reversed on reasonable doubt grounds, the concurring justice would not have reached the procedural due process issues.

(Defendant was represented by Assistant Defender Mario Kladis, Ottawa.)

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§12-3

Conduct of Counsel and *Pro Se* Litigant

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The alleged condemner in an indirect contempt case is entitled to due process safeguards, including notice, an opportunity to answer, and a hearing. Such safeguards are not required for direct contempt, which may be punished summarily because all of the elements of the offense are within the direct knowledge of the court. However, where direct criminal contempt occurs in the constructive presence of the court, as where the contempt is based on the filing of a document in the clerk's office, the procedural requirements of indirect criminal contempt proceedings must be followed.

One element of contempt is that the conduct in question must have been wilfully committed. Intent may be inferred from the circumstances accompanying the conduct and need not be proven directly.

2. The evidence was insufficient to show that defendant acted wilfully when he committed the conduct in question. Defendant filed a *pro se* "petition for injunctive relief" which argued that he was statutorily entitled to receive day-for-day good conduct credit against his sentence. He also sent a proposed order which he asked the court to enter and which had the judge's name typed on (rather than below) the signature line. The trial court found that the order might be interpreted as a copy of an order that had been entered by the court rather than a proposed order, and could hinder the administration of justice and "put the Court in disrepute."

The Appellate Court concluded that there was insufficient evidence to show that defendant intended to embarrass, hinder, or obstruct the trial court. "At most, the facts and circumstances indicate defendant submitted 'a faulty proposed order.'" Because there was insufficient evidence to support a finding of direct criminal contempt, the trial court's order was reversed.

3. Furthermore, because this was a constructive direct criminal contempt proceeding which occurred outside the presence of the trial judge, defendant was entitled to procedural protections including notice, an opportunity to answer, a hearing, and several provisions applicable to criminal cases including the privilege against self-incrimination, the presumption of innocence, the reasonable doubt standard, the right to counsel, the right to confront or cross-examine witnesses, the right to be personally present at trial, the right to testify or remain silent, the right to compulsory process, and the right to present testimony favorable to his defense.

(Defendant was represented by Assistant Defender John Gleason, Mt. Vernon.)

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§12-4

Violating Court Orders

People ex rel. City of Chicago v. Le Mirage, Inc., 2013 IL 113482 (No. 113482, 4/4/13)

1. To sustain a finding of indirect criminal contempt for violating a court order outside the court's presence, two elements must be proved: (1) the existence of a court order; and (2) a willful violation of that order. An injunction order cannot support a finding of contempt unless it sets forth with certainty, clarity and conciseness precisely what actions are enjoined. In reviewing the sufficiency of the evidence in a criminal contempt case, the appropriate standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond a reasonable doubt.

A jury found defendants guilty of indirect criminal contempt for violating court orders

that prohibited occupancy of the second floor and mezzanine area of a building where defendants operated a nightclub.

2. The orders entered in this case, prohibiting occupancy of the “2nd floor” of the premises, were sufficiently clear to support a finding of contempt. The court rejected the argument that the “2nd floor” meant only the mezzanine area that extended over the second floor.

3. Any confusion that existed based on transcripts of the proceedings in building court regarding whether the orders only prohibited occupancy of the mezzanine was only relevant to whether defendants’ violation of the court’s orders was willful. Ambiguities raised by those transcripts were matters for the jury to weigh.

Viewing all of the evidence in the light most favorable to the prosecution, a rational jury could find that defendants were fully aware that the orders closed not just the mezzanine, but the entire second floor. One defendant, who was an attorney, was present in court when reference was made to previous order “not to occupy the mezzanine, the second floor, and the VIP rooms.” The jury was free to disbelieve his testimony that he thought the court only meant to close the mezzanine level where there was evidence that he was less than forthcoming with accurate information regarding the operations of the nightclub and its staff. There was no evidence that the other defendant was told anything other than that the entire second floor had been ordered closed.

Moreover, a rational jury could conclude that defendants violated the orders closing the mezzanine where there was evidence that this area was also routinely used after it was ordered closed.

People ex rel. City of Chicago v. Le Mirage, 2013 IL App (1st) 093547 (Nos. 1-09-3547 & 1-09-3549 cons., 11/14/13)

Criminal contempt is punishable by fine or imprisonment. The power to punish for contempt is inherent and can be neither created nor limited by statute. Because it is not subject to legislation, contempt has no sentencing classification or range. Because criminal contempt is not bound by sentencing ranges, courts have a special responsibility for determining that the contempt power is not abused. Punishment of criminal contempt should reflect the least possible power adequate to the end proposed.

In sentencing a criminal contemnor, a trial court may consider: (1) the extent of the willful and deliberate defiance of the court’s order; (2) the seriousness of the consequences of the contumacious behavior; (3) the public interest in terminating the defendant’s defiance; and (4) the importance of deterring future acts. Sentences imposed for criminal contempt are reviewed for an abuse of discretion.

Defendants were convicted of indirect criminal contempt for violating a court order that they vacate the second floor of a building due to building code violations that made occupancy of that floor unsafe. Deaths and injuries occurred when they violated that order by allowing the second floor to be occupied. Those deaths and injuries did not result from the structural defects that made occupancy of the second floor unsafe, but occurred when 21 people were crushed to death in a panic after security guards released pepper spray in an attempt to subdue a fight. The deaths and injuries were not properly considered by the court in aggravation where there was no reliable evidence that defendants’ contumacious conduct was the proximate cause of those deaths and injuries.

People v. Covington, 395 Ill.App.3d 996, 917 N.E.2d 618 (4th Dist. 2009)

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to comply with a court order. Under civil contempt, sanctions cease when the contemnor complies with the court order. Thus, a civil contemnor is said to “hold the keys to the jailhouse door.”

Criminal contempt, on the other hand, punishes one for committing prohibited conduct or for failing to take action that was required. Where the purpose of the trial court’s sanctions was not to compel future action, but to punish defendant for failing to obey the trial court’s order to obtain employment, the contempt was clearly criminal rather than civil.

2. A defendant may be sanctioned for indirect criminal contempt only if he is afforded the same constitutional protections afforded to any other criminal defendant. An alleged criminal contemnor is entitled to know the nature of the charge and to have the charge definitely and specifically set forth. In addition, the defendant must have an opportunity to respond. Finally, an alleged contemnor enjoys the privilege against self-incrimination, the presumption of innocence, and the right to be proved guilty beyond a reasonable doubt.

3. Defendant was not afforded sufficient due process to permit an adjudication of indirect criminal contempt. To provide notice of the alleged contempt, the contemnor must receive written notice of the conduct which allegedly constituted contempt. Because the State did not file a petition for adjudication of criminal contempt, but merely filed a petition for rule to show cause, the procedure was insufficient to provide proper notice of a potential criminal sanction for contempt.

In addition, the State has the burden to prove the charges in a criminal contempt petition beyond a reasonable doubt, and cannot shift that burden to the defendant compelling him to “show cause” why he should not be held in contempt. Neither the State nor the defendant presented any evidence concerning the alleged contempt. However, the court took judicial notice of a previous proceeding at which it *sua sponte* asked the defendant to explain why he did not have a job and why he should not be held in contempt. The trial judge also asked defendant whether he had any witnesses or evidence to present in opposition to the contempt petition, and on several occasions ordered defendant to show what he had done to seek employment. The court concluded that such a procedure impermissibly shifted the State’s burden of proof to the defendant.

Finally, a person charged with indirect criminal contempt is entitled to, and must be admonished of, the right to counsel. Here, the trial court did not at any point inform defendant of his right to counsel.

The indirect criminal contempt order was vacated, and the cause was remanded for further proceedings.

(Defendant was represented by Assistant Defender Stuart Shiffman, Springfield.)

People v. Le Mirage, Inc., 2011 IL App (1st) 093547 (Nos. 1-09-3547 & 1-09-3549 cons., 11/16/11)

To sustain a charge of indirect criminal contempt, two elements must be proven beyond a reasonable doubt: (1) the existence of a valid court order; and (2) willful violation of that order by the respondent. Because of the liberty concerns implicated in criminal contempt proceedings and because contempt is such a drastic remedy, the underlying order must set forth with certainty, clarity, and conciseness precisely what actions are enjoined.

The Appellate Court reversed respondents’ convictions for contempt for failure to comply with an agreed order entered in a building code violation proceeding. The order stated, “Mandatory order not to occupy 2d floor.” The court found that the order was ambiguous and did not provide in reasonable detail the acts prohibited, because it was unclear whether the order referred to the second floor of the building, which was a nightclub, or the second floor

of the nightclub, which was a mezzanine area containing VIP rooms.

The mezzanine area had been the subject of the code violations suit. After receiving clarification from counsel, the court wrote on the half sheet of that proceeding that the parties agreed to vacate the “2d floor VIP rooms.” At a subsequent hearing, the city attorney clarified that the VIP rooms and mezzanine were the concern. Other statements by the parties and the court supported that conclusion. There was no evidence that the parties had agreed to close the nightclub, and in fact the city issued a liquor license to the nightclub as the suit continued. Therefore the order was not sufficiently specific to uphold a criminal contempt conviction for violating an order closing the entire nightclub.

People v. Perez, 2014 IL App (3d) 120978 (No. 3-12-0978, 10/1/14)

1. Criminal contempt arises from conduct calculated to: (1) impede, embarrass, or obstruct the court in its administration of justice; (2) derogate from the court’s authority or dignity; or (3) bring the administration of law into disrepute. Direct criminal contempt involves a defiant or disrespectful act occurring in the courtroom and witnessed by the judge. Neither a formal charge nor an evidentiary hearing is necessary in direct criminal contempt. The misconduct is observed by the judge and the relevant facts lie within his or her personal knowledge.

Indirect criminal contempt, by contrast, involves conduct the judge has not personally witnessed. Accordingly, indirect criminal proceedings must be initiated by a petitioner’s written request for adjudication and give rise to similar procedural safeguards as those required in criminal proceedings, including the right to be advised of the nature of charge, to be presumed innocent, and proof beyond a reasonable doubt.

Typically, indirect criminal contempt involves a situation where the accused willfully ignores a valid court order. In some unusual situations, indirect criminal contempt involves disrespectful acts to the court’s authority, even though such acts were not witnessed by the judge.

2. Defendant was in traffic court waiting to appear on a speeding ticket. When the judge took a recess, defendant left the courtroom and in the hallway a bailiff overheard her say, “I waited all fucking morning and now she takes a break.” Defendant walked “all the way down the hall” continuing to swear. The bailiff told her she could not use such language and defendant calmed down.

After the bailiff told the judge about defendant’s comments, the judge instructed the State to prepare and file a petition for contempt. The State drafted a document entitled “Court Order,” which ordered defendant to “show good cause as to why she should not be held in indirect criminal contempt of court.” The judge denied defense counsel’s request for a short continuance to prepare for trial, stating that the case was not criminal, but basically civil in nature, and proceeded to trial immediately.

The bailiff testified about what she observed and after arguments by counsel, the judge found defendant guilty of criminal contempt and sentenced her to eight days in jail. In making her findings, the judge again stated that the case was civil in nature and the standard was preponderance of the evidence. The judge found that defendant did not “do something that she was told to do,” and engaged in an outburst that was “disruptive to my court and the administration of justice.” The judge also found that the words were very disrespectful.

At the end of her findings, the judge stated that it was criminal contempt, and “If you want to say beyond a reasonable doubt...if that’s the standard, we will find that beyond a reasonable doubt.”

3. The Appellate Court reversed defendant’s conviction outright since the evidence did

not prove that she engaged in criminal contempt. The court disagreed with the trial judge's finding that defendant's words were disrespectful or that they were intended to embarrass the judge and bring her administration of the law into disrepute. Defendant never communicated her statements directly to the judge and did not identify the judge by name. And her curse word was not linked to the judge herself, but rather was linked to the length of time defendant had been waiting, "all f**king morning." The court noted that defendant's comments about additional delay resulting from a recess may constitute protected speech under the first amendment.

The court also disagreed with the trial judge's finding that defendant did not "do something that she was told to do." There was no evidence that defendant disobeyed a court order requiring her to behave in a certain way in the hallway. Additionally, once the bailiff told defendant not to use profanity, defendant "simmered" down, further showing that defendant did not disobey any directive of the court or an officer of the court.

4. Although unnecessary to the disposition of this case, and conceded by the State on appeal, the Appellate Court noted several ways in which the trial judge's actions violated defendant's right to due process. First, the charging instrument should not have been framed as a petition to show cause since this language applies only in civil contempt proceedings and impermissibly shifted the burden of proof to defendant.

Second, the judge's denial of defense counsel's request for a continuance to prepare for trial deprived defendant of her due process right to have notice within a reasonable time in advance of the hearing. And third, the judge should have voluntarily recused herself since she spoke directly to the State's only witness, the bailiff. Due process requires another judge to hear the case if the judicial target of verbal commentary becomes personally embroiled in the conflict.

Defendant's conviction was reversed.

Because the case was reversed on reasonable doubt grounds, the concurring justice would not have reached the procedural due process issues.

(Defendant was represented by Assistant Defender Mario Kladis, Ottawa.)

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Other Conduct

People v. Perez, 2014 IL App (3d) 120978 (No. 3-12-0978, 10/1/14)

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The bailiff testified about what she observed and after arguments by counsel, the judge found defendant guilty of criminal contempt and sentenced her to eight days in jail. In making her findings, the judge again stated that the case was civil in nature and the standard was preponderance of the evidence. The judge found that defendant did not "do something that she was told to do," and engaged in an outburst that was "disruptive to my court and the administration of justice." The judge also found that the words were very disrespectful.

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hear the case if the judicial target of verbal commentary becomes personally embroiled in the conflict.

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